

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\* \* \*

UNITED STATES OF AMERICA,

Plaintiff,

v.

DARIN JEROME FRENCH,

Defendant.

3:08-CR-0006-LRH-WGC

ORDER

Before the court is defendant Darin Jerome French's ("French") motion for reconsideration of the court's December 9, 2014 order denying his motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255 (Doc. #429<sup>1</sup>). Doc. #430. The United States filed an opposition (Doc. #431) to which French replied (Doc. #432).

**I. Facts and Background**

On April 29, 2009, French, along with his then-wife and co-defendant Jennifer Lynn, was charged in a superseding indictment with thirty-two (32) counts of mail fraud in violation of 18 U.S.C. § 1341; twenty-five (25) counts of wire fraud in violation of 18 U.S.C. § 1343; three (3) counts of money laundering in violation of 18 U.S.C. § 1957; and one (1) count of money laundering in violation of 18 U.S.C. § 1956(a)(1)(B)(1) for his participation in an alleged scheme to defraud customers of his on-line appliance business. Doc. #60.

<sup>1</sup> Refers to the court's docket number.

1 After a nine-day jury trial, French was convicted of twenty-two (22) counts of mail fraud in  
2 violation of 18 U.S.C. § 1341; eleven (11) counts of wire fraud in violation of 18 U.S.C. § 1343;  
3 and three (3) counts of money laundering in violation of 18 U.S.C. §§ 1956(a)(1)(B)(1) and 1957.  
4 Doc. #269. French was then sentenced to one hundred and fifty (150) months incarceration.  
5 Doc. #317.

6 French appealed both his conviction and sentence. Doc. #318. On October 12, 2012, the  
7 Ninth Circuit reversed two of French's convictions for money laundering, but affirmed the  
8 remaining thirty-four (34) counts of conviction as well as the one hundred and fifty (150) month  
9 sentence. *See United States v. French*, 494 Fed. Appx. 784 (9th Cir. 2012). Subsequently, French  
10 filed a motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255 (Doc. #402)  
11 which was denied by the court on December 9, 2014 (Doc. #429). Thereafter, French filed the  
12 present motion for reconsideration. Doc. #430.

## 13 **II. Discussion**

14 A motion for reconsideration is an "extraordinary remedy, to be used sparingly in the  
15 interests of finality and conservation of judicial resources." *Kona Enters., Inc. v. Estate of Bishop*,  
16 229 F.3d 887, 890 (9th Cir. 2000). Rule 59(e) provides that a district court may reconsider a prior  
17 order where the court is presented with newly discovered evidence, an intervening change of  
18 controlling law, manifest injustice, or where the prior order was clearly erroneous. FED. R. CIV. P.  
19 59(e); *see also United States v. Cuddy*, 147 F.3d 1111, 1114 (9th Cir. 1998); *School Dist. No. 1J*,  
20 *Multnomah County v. AcandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993). In a habeas action, a motion  
21 for reconsideration requires a showing that the court overlooked issues that may have materially  
22 influenced the court's prior decisions. *See e.g., Browder v. Director*, 434 U.S. 257, 270-71 (1978).

23 In his motion for reconsideration, French raises a single challenge to the court's order  
24 denying his motion to vacate. Specifically, French argues that reconsideration is warranted because  
25 the court erred in finding that his appellate counsel was not constitutionally ineffective for failing to  
26 challenge his sentencing enhancement for the number of victims. In essence, French once again

1 argues that he should not have received a sentencing enhancement due to the number of victims in  
2 this case because the credit card victims were ultimately reimbursed by their credit card companies.

3 As addressed at length in the court's order denying his motion to vacate, the court's victim  
4 finding was not wrong. In the Ninth Circuit, "an individual may be considered a victim even if the  
5 individual's losses are fully reimbursed, provided the reimbursement was not immediate." *United*  
6 *States v. Armstead*, 552 F.3d 769, 782 (9th Cir. 2008). In this case, the government produced  
7 evidence showing that reimbursement by the credit card companies was not immediate. *See* Doc.  
8 #311, p. 4. This evidence, when combined with the 46 victims who paid by check and never  
9 received reimbursement, establishes beyond contestation that there were more than 250 victims of  
10 French's fraud<sup>2</sup>.

11 French's present motion for reconsideration offers nothing new to the court's analysis, other  
12 than his dissatisfaction with the court's conclusion. Rather, this motion merely rehashes his long-  
13 standing complaints about his conviction and sentence, which both this court and the Ninth Circuit  
14 have rejected. Therefore, the court finds that it did not err in denying French's motion to vacate and  
15 shall deny his present motion for reconsideration accordingly. The court also finds that a hearing on  
16 French's motion for reconsideration is unnecessary.

17  
18 IT IS THEREFORE ORDERED that defendant's motion for reconsideration (Doc. #430) is  
19 DENIED.

20 IT IS SO ORDERED.

21 DATED this 11th day of May, 2015.

22   
23 LARRY R. HICKS  
24 UNITED STATES DISTRICT JUDGE

25 <sup>2</sup> It is noteworthy that the credit card companies which provided reimbursement to the 200+  
26 victim cardholders then became victims themselves 200+ times. The victimization count never  
changed.